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SUBJECT: U/S LAVIN RAISES COPYRIGHT LEGISLATION CONCERNS WITH GOF

REF: A) PARIS 6811 B) PARIS 5242

1. (SBU) Summary: Commerce Under Secretary Franklin Lavin raised concerns over France's recently passed copyright legislation (reftels) with Ministry of Culture advisors Laurence Franceschini and Marc Herubel on October 19, and separately with Trade Minister Lagarde's Chief of Staff Stanislas Pottier and Invest in France President Philippe Favre. Lavin said the French copyright legislation could potentially represent "a backwards step" for innovation, jobs and culture. The Under Secretary made the point to the Culture Ministry that Apple is the largest carrier of Francophone music.

¶2. (SBU) Franceschini and Herubel said the GOF would take a pragmatic approach to drafting implementing regulations to the legislation, including the decree establishing a "technical measures" regulatory authority. The advisors said the regulatory authority would make decisions on the dissemination of DRM on a case-by-case basis and that the potential impact on the integrity of a firm's IP would be factored into the decision-making. However, the Culture Ministry could not guarantee that software providers would absolutely not have to give up protected intellectual property information for the sake of interoperability. In response to questioning, Herubel said the GOF would welcome U.S. analysis for WTO/TRIPS-consistency of the legislation to help inform implementing regulations. End summary.

¶3. (SBU) ITA Under Secretary Franklin Lavin met with Ministry of Culture Deputy Cabinet Director Laurence Franceschini and Technical Advisor Marc Herubel on October 19 to raise U.S. concerns related to France's copyright law. Herubel told Lavin the legislation had been passed under fast-track procedures, and that political pressure on the National Assembly had resulted in the legislation "going a little far" in satisfying a vocal slice of the user population. The July decision of the Constitutional Court (ref B) -- and now the process of drafting implementing regulations -- was helping to reestablish "equilibrium" and ensure protection of IP integrity.

¶3. (SBU) Franceschini and Herubel said implementing regulations would include a decree creating a new regulatory authority responsible for matters related to the mandatory dissemination of DRM systems, among other issues. The decree should be ready by the end of the year, with the goal of standing up the authority in January.

¶4. (SBU) Franceschini said the regulatory authority would make decisions on dissemination of DRM systems on a case-by-case basis. She claimed the approach would be "pragmatic" and the potential impact on the integrity of a firm's IP would be factored into decision-making. Franceschini also claimed firms could enjoy a level of DRM protection by setting compensation prices high, though she was unclear on how/whether the ability to do might be impaired by decisions of the regulatory authority. When Franceschini was challenged as to how the Ministry would guard against confiscation of technology, she was unable to provide a clear explanation, saying only that the courts would adjudicate fairly.

¶5. (SBU) Asked why the market wouldn't be more efficient in clearing such transactions, Franceschini listed several concerns. In a non-interoperable environment, resulting segmentation increased risks of piracy, as experience had shown. The vertically integrated strategies around DRM, favored by companies such as Apple, clearly had been critical in helping to launch a new market. As the market matured, it was important to encourage an "interoperable environment" in which several standards might co-exist. Franceschini drew on the television analogy: the consumer would not put up with ten decoder boxes in order to watch ten different channels. The advisors added that when France's Competition Council denied a suit brought by Virgin Mega to open up Fairplay, the market was not yet mature. Now that it has matured, provisions must be made for interoperability, otherwise the consumer is held prisoner.

¶6. (SBU) In response to probing, Herubel said he thought the copyright legislation was WTO/TRIPS-consistent. But he noted that if the United States had a different analysis, he would be interested in factoring that into consideration as the Ministry proceeds with drafting implementing regulations.

¶7. (SBU) U/S Lavin closed the meeting by underscoring the importance of what was at stake. The French copyright legislation could potentially represent "a backwards step" for innovation, jobs and culture. It would be critical to strike a balance between interoperability and proprietary rights that did not come down on the wrong side of the equation. He said this legislation gives the impression to future innovators and investors the government may arbitrarily, in the name of culture and consumer rights, take away intellectual property rights if a later competitor promises to provide the same service at a lower price. The Under Secretary also made the point that Apple is the largest carrier of Francophone music. Apple has increased the public's access to current and past French music. That, he said, is the irony here.

¶8. (SBU) In a separate meeting, Stanislas Pottier, Chief of Staff to the French Trade Minister, told Lavin there would be inter-ministerial consultations on the implementing regulations. He appeared confident his Ministry could ensure strong IP protection in the implementing regulations. Pottier said the Prime Minister's office was concerned about not weakening IP protection. Philippe Favre, head of the French Government's investment promotion agency Invest in France, intimated to Lavin that the IP damaging elements of the legislation would be resolved in the implementing regulations. U/S Lavin also discussed the DRM issue with MEDEF, the French Employer's association. MEDEF did not appear fluent on the issue, but was ready to explore it further.

¶10. (SBU) Comment: The Culture Ministry said it would seriously review input into the implementing regulation drafting process. If we have specific concerns over WTO/TRIPS consistency, for example, sharing those with the French before the decree is finalized may help mitigate negative consequences of the legislation.

¶11. (U) Technical note: it appears that both film and music will be within the scope of the legislation and software publishers will be responsible for paying compensation to the DRM provider.

¶12. (U) U/S Lavin has cleared this cable.

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